IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Revision No. 274/2001
(Old No. 833/1990)

Bisheshwar Prasad ……Applicant.

Versus

State ……Respondent.

Hon. Irshad Hussain, J.

This is a criminal revision under Section 397/401 of the Code of Criminal Procedure, 1973 against the judgment dated 3.3.1990 passed by the then Sessions Judge, Tehri Garhwal in criminal case no. 45/1989 which was filed by the revision against the judgment and order dated 4.10.1989 passed by the then C.J.M., Tehri Garhwal in criminal case no. 253/1988 under Section 403 IPC between State Vs. Bisheshwar Prasad convicting and sentencing the revisionist to pay the fine of Rs. 1,000/- for the said offence.

Heard Sri Lokendra Dobhal learned counsel for the revisionist and learned A.G.A. and perused the record. The prosecution allegation is that the revisionist had withdrawn a sum of Rs. 600/- from the account of Jan Vikas Samiti (for short 'Samiti') while the president of the 'Samiti' Siya Ram (PW-2) had gone to Delhi on 14.3.1985 and converted the same to his own use till the same was deposited by him in two instalments of Rs. 300/- vide receipt dated 13.3.1986 and 22.3.1987. The revisionist took defence that the money was withdrawn by way of loan by a resolution of the 'Samiti'. Ex.Kha.1. Perusal of the copy of the resolution Ex.Kha.1 indicate that the resolution was not in regard to grant of any loan of Rs. 600/- to the revisionist. Therefore, the defence taken by the revisionist false and was rightly not accepted by the learned C.J.M. and also by the Sessions Judge. The revisionist had converted to his own use the money and therefore the offense as punishable under Section 403 IPC was fully established on his own showing.

Learned Counsel for the revisionist submitted that the money is not moveable property and therefore the offence under Section 403 IPC was not made out. Argument is wholly misconceived because the money fall in the category of moveable property.

Learned Counsel lastly submitted that the fine imposed is excessive. The revisionist was not awarded any sentence of imprisonment and considering this aspect the imposition of fine of Rs. 1,000/- was fully justified. There is thus no merit in this revision and the same is herby dismissed. Fine, if not deposited, shall be deposted by the revisionist within a period of one month.

(Irshad Hussain, J.)

Dated 11.12.2003

Rawat